

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS et al.,  
Plaintiffs,  
-against-  
KELCO CONSTRUCTION, INC. et al.,  
Defendants.

21-CV-9014 (JGLC)

**ORDER ADOPTING  
REPORT AND  
RECOMMENDATION**

JESSICA G. L. CLARKE, United States District Judge:

Defendants’ partial Motion to Dismiss, ECF No. 149, was referred to Magistrate Judge Aaron for a Report and Recommendation. *See* Docket No. 152. In the Report and Recommendation filed on July 25, 2023, Magistrate Judge Aaron recommended that the motion be granted in part and denied in part. Specifically, Magistrate Judge Aaron recommended that Defendants’ motion be denied insofar as it seeks to dismiss claims asserted in the Third Amended Complaint (“TAC”) against Kelco Landscaping, Inc. (“Kelco Landscaping”) and that it be granted insofar as it seeks to dismiss the Fourth Cause of Action, with leave for Plaintiffs to replead the Fourth Cause of Action. *See* Docket No. 163.

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party

makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Report and Recommendation advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections and warned that failure to timely file such objections would result in waiver of any right to object. *See* ECF No. 163. In addition, the Report and Recommendation expressly called the parties' attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, the parties waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992).

Despite the waiver, the Court has reviewed the petition and the Report and Recommendation, unguided by objections, and finds the Report and Recommendation to be well reasoned and grounded in fact and law. Application of the four-factor test articulated in *Juarez v. 449 Rest., Inc.*, 29 F. Supp. 3d 363, 367 (S.D.N.Y. 2014) indicates that Plaintiffs plausibly have alleged that Kelco Landscaping acted as a single integrated enterprise with Kelco Construction, Inc. ("Kelco Construction"). However, regarding the Fourth Cause of Action in the TAC, Plaintiffs have not sufficiently pled the contracts under which they are asserting third-party beneficiary rights, the parties to those contracts and the relevant provisions of those contracts.

Accordingly, the Report and Recommendation is ADOPTED in its entirety. Plaintiffs are granted leave to replead the Fourth Cause of Action. The Clerk of Court is directed to terminate ECF No. 149.

SO ORDERED.

Dated: August 16, 2023  
New York, New York

A handwritten signature in blue ink that reads "Jessica Clarke". The signature is written in a cursive style and is positioned above a horizontal line.

JESSICA G. L. CLARKE  
United States District Judge